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BEFORE THE ARIZONA CORPORATION COMMISSION**COMMISSIONERS**

Arizona Corporation Commission

DOCKETED

APR 10 2013

BOB STUMP – Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF
WHOLESALE CARRIER SERVICES, INC. FOR
APPROVAL OF A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO
PROVIDE RESOLD LOCAL EXCHANGE,
FACILITIES-BASED LOCAL EXCHANGE,
AND ACCESS TELECOMMUNICATION
SERVICES IN ARIZONA.

DOCKET NO. T-04110A-11-0422

DECISION NO. 73831**OPINION AND ORDER**

DATES OF HEARINGS:

October 3, 2012 and December 13, 2012

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Yvette B. Kinsey

APPEARANCES:

Mr. Matthew G. Bingham, LEWIS AND ROCA, L.L.P.,
on behalf of Applicant; and

Ms. Bridget A. Humphrey, Staff Attorney, Legal
Division, on behalf of the Utilities Division of the
Arizona Corporation Commission.

BY THE COMMISSION:

On November 22, 2011, Wholesale Carrier Services, Inc. ("WCS" or "Company") filed with the Arizona Corporation Commission ("Commission") an application for approval of a Certificate of Convenience and Necessity ("CC&N") to provide resold local exchange, facilities-based local exchange, and access telecommunication services in Arizona. WCS' application also requests a determination that its proposed services are competitive in Arizona.

On March 26, 2012, WCS docketed responses to Staff's First Set of Data Requests.

On July 25, 2012, Staff filed a Staff Report recommending approval of WCS' application subject to certain conditions.

On July 31, 2012, by Procedural Order, the hearing date for this matter was scheduled for October 3, 2012; publication of notice was ordered; and other filing deadlines were established.

On October 3, 2012, a full public hearing was convened as scheduled before a duly authorized Administrative Law Judge of the Commission. Staff appeared through counsel and WCS' President, Chris Barton, appeared telephonically. Discussions were held regarding the Company's failure to meet the notice requirements as set forth in the July 31, 2012, Procedural Order; the Company's need to re-publish notice as directed; the Company's need to comply with Arizona Supreme Court Rules 31 and 38 and A.R.S. § 40-243 with respect to the practice of law in Arizona; and the need for the evidentiary hearing and procedural deadlines to be rescheduled.

On October 3, 2012, by Procedural Order, the hearing in the matter was rescheduled to commence on December 13, 2012, and other procedural deadlines were established.

On August 20, 2012, the Company filed an Affidavit of Publication, indicating that notice of the application and hearing date had been published, on November 2, 2012, in the *Arizona Republic*, a newspaper of general circulation in the State of Arizona.

On December 12, 2012, Matthew G. Bingham of Lewis and Roca, L.L.P. filed a Notice of Appearance on behalf of Wholesale Carrier Services, Inc.

On December 13, 2012, a full public hearing was reconvened. WCS' witness participated telephonically with local counsel and presented testimony and evidence. Staff appeared through counsel and presented evidence and testimony. No members of the public appeared to give public comments in this matter. At the conclusion of the hearing, the matter was taken under advisement pending submission of a Recommended Opinion and Order of the Commission.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. WCS is a foreign corporation, organized under the laws of Florida, and authorized to transact business in Arizona.¹

2. WCS' headquarters is located in Coral Springs, Florida.²

¹ Exhibit A-1, Attachment A.

² Id.

1 3. WCS is currently authorized to provide competitive resold interexchange and
2 alternative operator telecommunication services in Arizona.³

3 4. On November 22, 2011, WCS filed an application seeking authority to provide
4 resold local exchange, facilities-based local exchange, and access telecommunication services in
5 Arizona. WCS' application also requests a determination that its proposed services are
6 competitive in Arizona.

7 5. Notice of the application was given in accordance with the law.

8 6. Staff recommends approval of WCS' application for a CC&N to provide its requested
9 telecommunications services in Arizona.

10 7. Staff recommends:

- 11 a. That WCS comply with all Commission Rules, Orders and other requirements
12 relevant to the provision of intrastate telecommunications services;
- 13 b. That WCS abide by the quality of service standards that were approved by the
14 Commission for CenturyLink in Docket No. T-01051B-93-0183;
- 15 c. That WCS be prohibited from barring access to alternative local exchange
16 service providers who wish to serve areas where the Company is the only
17 provider of local exchange service facilities;
- 18 d. That WCS be required to notify the Commission immediately upon changes to
19 the Company's name, address or telephone number;
- 20 e. That WCS cooperate with Commission investigations including, but not
21 limited to customer complaints;
- 22 f. The rates proposed by this filing are for competitive services. In general, rates
23 for competitive services are not set according to rate of return regulation. Staff
24 obtained information from WCS and has determined that its fair value rate
25 base is zero. Staff has reviewed the rates to be charged by the Company and
26 believes they are just and reasonable. The rates to be ultimately charged by the
27 Company will be heavily influenced by the market. Therefore, while Staff
28 considered the fair value rate base information submitted by the Company, the
fair value information provided was not given substantial weight in this
analysis;
- g. That WCS offer Caller ID with the capability to toggle between blocking and
unblocking the transmission of the telephone number at no charge;
- h. That WCS offer Last Call Return service that will not return calls to telephone
numbers that have the privacy indicator activated;

³ Decision No. 66118 (July 25, 2003).

- i. That the Commission authorize WCS to discount its rates and service charges to the marginal cost of providing the services.
- j. That WCS be required to submit conforming local exchange service and access service tariffs pages.

8. Staff further recommends that if WCS fails to comply with the following compliance items that the Commission consider WCS's CC&N null and void, after due process.

a. WCS shall docket conforming tariff pages for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the Application.

b. WCS shall:

i. Procure either a performance bond or an irrevocable sight draft letter of credit ("ISDLC") equal to \$125,000. The minimum performance bond or ISDLC amount of \$125,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from WCS' customers. The performance bond or ISDLC amount should be increased in increments of \$62,500. This increase should occur when the total amount of the advances, deposits and prepayments is within \$12,500 or the performance bond or ISDLC amount.

ii. The original performance bond or ISDLC should be filed with the Commission's Business Office and copies of the performance bond or ISDLC with the Commission's Docket Control, as a compliance item in this docket, within 90 days of the effective date of a Decision in this matter or 10 days before the first customer is served, whichever comes first. The performance bond or ISDLC must remain in effect until further order of the Commission. Staff also recommends that WCS notify the Commission through a compliance filing when it begins serving customers.

The Commission may draw on the performance bond or ISDLC, on behalf of, and for the sole benefit of WCS' customers, if the Commission finds, in its discretion, that the Company is in default of its obligations arising from its CC&N. The Commission may use the performance bond or ISDLC funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Company's customers.

iii. Notify the Commission through a compliance filing when it begins serving customers.

9. In addition, Staff recommends that WCS abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunication service providers that interconnect into the public switched network shall provide funding for the

1 Arizona Universal Service Fund ("AUSF"). WCS will make the necessary monthly payments
2 required by A.A.C. R14-2-1204(B).

3 10. At hearing, WCS's witness testified that WCS agrees to comply with Staff's
4 recommendations.

5 **Technical Capabilities**

6 11. WCS intends to offer its proposed services to only business customers, using
7 interconnection agreements with Qwest (now known as "CenturyLink").⁴ WCS states it will begin
8 service in Arizona immediately upon the Commission's approval.⁵

9 12. WCS states that customer service for Arizona consumers will be handled through a
10 toll free number linked to its headquarters in Coral Springs, Florida, which handles all of WCS'
11 customer service calls nationally.⁶ According to WCS' witness, WCS will not have any employees in
12 Arizona and customer repairs and maintenance will be handled through CenturyLink and governed
13 by an interconnection agreement.⁷

14 13. WCS' top executives possess more than sixty (60) years' experience in the
15 telecommunication industry.⁸

16 14. WCS states it is currently authorized to provide its proposed services in thirty-four
17 (34) states/jurisdictions.⁹

18 15. Staff contacted fifteen (15) Public Utility Commissions ("PUCs") where WCS is
19 certificated or registered to provide telecommunication services and verified that WCS holds a
20 certificate or is registered. Staff also states that the fifteen (15) PUCs Staff contacted reported that no
21 consumer complaints had been filed against WCS in those states/jurisdictions.¹⁰

22 16. Staff concludes that WCS has the technical experience needed to provide the
23 telecommunication services WCS is requesting to provide in Arizona.¹¹

24 _____
25 ⁴ Tr. at 10.

26 ⁵ Id.

27 ⁶ Tr. at 11.

28 ⁷ Id.

⁸ Exhibit A-1, Attachment C.

⁹ Exhibit S-1, Attachment A.

¹⁰ Exhibit S-1 at 1.

¹¹ Exhibit S-1 at 2.

1 **Financial Capabilities**

2 17. WCS submitted evidence of audited consolidated financial statements of Wholesale
3 Carrier Services, Inc., and its subsidiaries for the year of 2010.¹² For the twelve months ending
4 December 31, 2010, WCS listed total assets of \$6,082,000; total equity of \$944,000; and net income
5 of \$650,000.¹³ In addition, WCS submitted evidence of unaudited consolidated financial statements
6 for the twelve months ending December 31, 2011, showing total assets of \$7,328,653; total equity of
7 \$1,662,411; and net income of \$556,401.¹⁴

8 18. Based on WCS' proposed tariff, which states WCS may require advances, deposits,
9 and prepayments from its customers, Staff recommends that WCS procure a performance bond or
10 ISDLC in the amount of \$125,000.

11 **Rates and Charges**

12 19. Staff believes that WCS will have to compete with other incumbent local exchange
13 carriers ("ILECs"), and various competitive local exchange ("CLECs"), and interexchange carriers
14 ("IXCs") in Arizona in order to gain new customers.¹⁵

15 20. WCS projects that for the first twelve months of operation in Arizona, it will have
16 total revenues of \$102,000; operating expenses of \$65,000; and a net book value of zero.¹⁶

17 21. Staff states that rates for competitive services are not set according to rate of return
18 regulation and based on the Company's projected net book value or fair value rate base of zero, the
19 rate to be charged will be heavily influenced by the market.¹⁷ Therefore, Staff states that while it
20 considered the fair value rate base information submitted by WCS, it did not accord that information
21 substantial weight in Staff's analysis.¹⁸

22 **Local Exchange Carrier Specific Issues**

23 22. Pursuant to A.A.C. R14-2-1308(A) and federal laws and rules, WCS will make
24 number portability available to facilitate the ability of customers to switch between authorized local

25 ¹² Exhibit A-2.

26 ¹³ Id.

26 ¹⁴ Id.

27 ¹⁵ Exhibit S-1 at 3.

27 ¹⁶ Exhibit A-1, Attachment E and Exhibit A-2.

27 ¹⁷ Exhibit S-1 at 3.

28 ¹⁸ Id.

1 carriers within a given wire center without changing their telephone number and without impairment
2 to quality, functionality, reliability or convenience of use.

3 23. In Commission Decision No. 59421 (December 20, 1995), the Commission approved
4 quality of service standards for Qwest which imposed penalties due to an unsatisfactory level of
5 service. In this matter, Staff believes WCS does not have a similar history of service quality
6 problems, and therefore the penalties in that decision should not apply.

7 24. In the areas where the Company is the only local exchange service provider, Staff
8 recommends that WCS be prohibited from barring access to alternative local exchange service
9 providers who wish to serve the area.

10 25. WCS will provide all customers with 911 and E911 service where available, or will
11 coordinate with ILECs, and emergency service providers to facilitate the service.

12 26. Pursuant to prior Commission Decisions, WCS may offer customer local area
13 signaling services such as Caller ID and Call Blocking, so long as the customer is able to block or
14 unblock each individual call at no additional cost.

15 27. WCS must offer Last Call Return service, which will not allow the return of calls to
16 the telephone numbers that have the privacy indicator activated.

17 **Complaint Information**

18 28. The Commission's Corporations Division has indicated that WCS is in good
19 standing.¹⁹

20 29. According to Staff, the Commission's Consumer Services Section reports that no
21 complaints have been filed against WCS in Arizona for the period beginning January 1, 2008 to May
22 10, 2012.²⁰

23 30. WCS' application states that none of the Company's officers, directors, partners, nor
24 managers have been, or are currently involved in any formal or informal complaint proceedings
25 before any state or federal regulatory agency, commission, administrative agency, or law enforcement
26

27
28 ¹⁹ Exhibit A-1, Attachment A.

²⁰ Exhibit S-1 at 5.

1 agency.²¹ Further, WCS states that none of the Company's officers, directors, partners or managers
 2 have been involved in any civil or criminal investigations, or had judgments entered in any civil
 3 matter, or by any administrative or regulatory agency, or been convicted of any criminal acts within
 4 the last ten (10) years.²²

5 Competitive Services Analysis

6 31. WCS has requested that its telecommunications services in Arizona be classified as
 7 competitive. Staff believes WCS's proposed services should be classified as competitive because
 8 there are alternatives to WCS's proposed services; ILECs hold a virtual monopoly in local exchange
 9 markets; WCS will have to convince customers to purchase its services; WCS has no ability to
 10 adversely affect the local exchange service market as several ILECs provide local exchange services;
 11 and WCS will be dependent on the ILECs to terminate traffic to customers, provide essential local
 12 service, and for interconnection. Given the above factors, Staff concludes that WCS' proposed
 13 services should be classified as competitive.

14 Resolution

15 32. WCS' top executives possess more than sixty (60) years of combined
 16 telecommunications experience; WCS is currently authorized to provide its proposed services in
 17 thirty-four(34) jurisdictions; WCS has not had any complaints filed against it in Arizona or any of the
 18 15 PUCs contacted by Staff; Staff believes that WCS's proposed tariffs will result in just and
 19 reasonable rates; and Staff concludes that WCS has the technical capability to provide its proposed
 20 services and that WCS' proposed services should be classified as competitive. We find that WCS has
 21 the technical capabilities to provide its proposed services in Arizona; that WCS will be operating in a
 22 competitive environment; its proposed tariffs will result in just and reasonable rates; and that the
 23 Company's proposed tariff filings are for competitive services within Arizona.

24 33. Staff's recommendations as set forth herein are reasonable and will be adopted.

25 CONCLUSIONS OF LAW

26 1. WCS is a public service corporation within the meaning of Article XV of the Arizona

27 ²¹ Exhibit A-1 (A-11).

28 ²² Exhibit A-1 (A-12).

Constitution and A.R.S. §40-281 and 40-282.

2. The Commission has jurisdiction over WCS and the subject matter of the amended application.

3. Notice of the application was given in accordance with the law.

4. A.R.S. §§ 40-282 allows a telecommunications company to file an application for a CC&N to provide competitive telecommunications services.

5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for WCS to provide the telecommunications services set forth in its amended application.

6. WCS is a fit and proper entity to receive a CC&N authorizing it to provide competitive facilities-based local exchange, resold local exchange, and private line telecommunications services in Arizona, subject to Staff's recommendations set forth herein.

7. The telecommunications services that WCS intends to provide are competitive within Arizona.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Applicant to establish rates and charges that are not less than the Applicant's total service long-run incremental costs of providing the competitive services approved herein.

9. Staff recommendations are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the amended application of WCS Communications, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive facilities-based local exchange, resold local exchange and access line telecommunication services within the State of Arizona, is hereby granted subject to Staff's conditions as set forth in Findings of Facts Nos. 7, 8, and 9.

IT IS FURTHER ORDERED that WCS Communications Inc. shall procure a performance bond or irrevocable sight draft letter of credit in the amount of \$125,000.

1 IT IS FURTHER ORDERED that WCS Communications Inc. shall file the original
2 performance bond or irrevocable sight draft letter of credit with the Commission's Business Office
3 and thirteen (13) copies of the performance bond or irrevocable sight draft letter of credit with
4 Docket Control, as a compliance item in this docket, within 90 days of the effective date of this
5 Decision or 10 days before the first customer is served, whichever comes earlier. The performance
6 bond or irrevocable sight draft letter of credit shall remain in effect until further order of the
7 Commission. The Commission may draw on the performance bond or irrevocable sight draft letter of
8 credit on behalf of and for the sole benefit of WCS's customers, if the Commission finds, in its
9 discretion, that WCS is in default of its obligations arising from its Certificate. The Commission may
10 use the performance bond or irrevocable sight draft letter of credit, as appropriate, to protect WCS's
11 customers and the public interest and take any and all actions the Commission deems necessary, in its
12 discretion, including, but not limited to returning prepayments or deposits collected from WCS's
13 customers.

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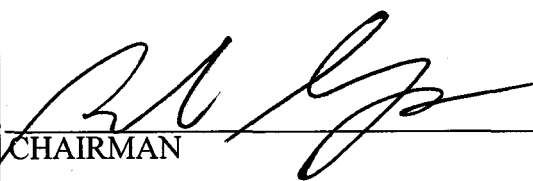
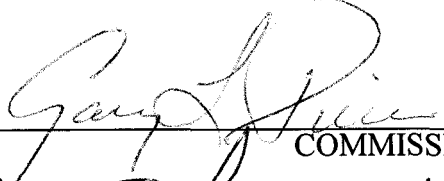

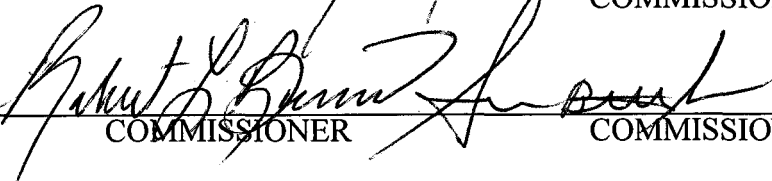
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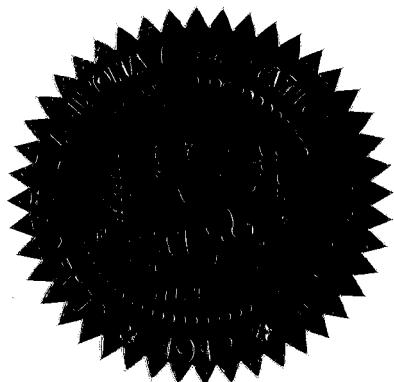
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IT IS FURTHER ORDERED that if WCS Communications Inc. fails to comply with Staff's conditions set forth in Finding of Fact No. 8, the Certificate of Convenience and Necessity granted herein shall be considered null and void after due process.

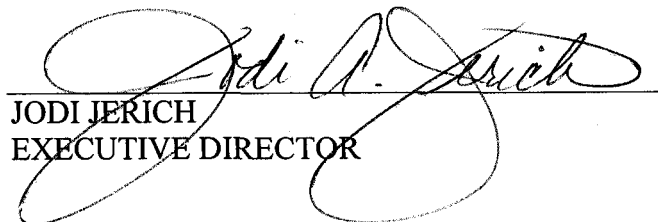
IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

	
CHAIRMAN	COMMISSIONER
	
COMMISSIONER	COMMISSIONER



IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 10th day of April 2013.


JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: WHOLESALE CARRIER SERVICES, INC.

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